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Introduction to Nordic Mediation Research



Anna Nylund, Kaijus Ervasti, and Lin Adrian

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Abstract This is an introduction to a collection of articles in the book Nordic mediation research. The background and history of mediation in the Nordic, or Scandinavian, countries is presented. The areas of mediation practice in the Nordic countries and Nordic mediation research are also introduced.

1 Background and History of Mediation in the Nordic Countries

The Nordic—or Scandinavian countries¹—Denmark, Finland, Iceland, Norway and Sweden have close geographic, historical, social, economic, cultural, linguistic and legal ties. The economies are organised in a similar manner in what is sometimes

¹The term Nordic is preferred in this volume, as it is more precise. Geographically, only Norway and Sweden are situated on the Scandinavian Peninsula. Often Denmark is included in Scandinavia, since Danish is a Scandinavian language. So is the Icelandic language, although Iceland is

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called the ‘Nordic model’. In this model, societies seek to blend a market economy with ‘economic efficiency’—presented in the form of generous welfare benefits. Welfare benefits are awarded to the individual rather than the family and much of the benefits are tax-funded (Andersen et al. 2007). Decision making in politics, and in many other organisations, is based on consensus and corporatism. Culturally, people in the Nordic countries value egalitarianism, low hierarchy, directness, collectivism and gender egalitarianism (Warner-Søderholm 2012). In the legal area, the countries share legal traditions and have historically inspired each other’s legislation and legal systems (Letto-Vanamo and Tamm 2016). This is also the case when it comes to alternative dispute resolution (ADR) and mediation. Because of these similarities, it makes sense to present mediation research from this particular region in the same book.

Mediation in some form has a long history in the Nordic countries (Adrian 2014; Ervasti 2014; Nylund 2014; Vindeløv 2012). For example, in 1795, the Danish King instituted national conciliation boards in Denmark and, 2 years later, in rural Norway by royal resolution (Adrian 2014). In the preamble of the resolution,² the King states that the purpose of the resolution is to prevent unnecessary and costly litigation between subjects. Accordingly, cases could be filed in court only after failed attempts to settle by a board. We also find traces of mediation in legislation in the medieval and early modern times (Adrian 2014; Nylund 2017; Sunde 2014). See more on the history of mediation in the Nordic countries in Ervasti (2018).

Modern-day mediation dates to the early 1980s in Finland, Norway and Sweden and to the 1990s in Denmark. The ideology of modern mediation in the Nordic countries is often attributed to Nils Christie and his ideas of conflict and conflict resolution presented in *Conflict as Property* from 1977. His main idea is that conflict should be resolved by those involved or affected by it rather than by the judicial system. Additionally, mediation in the Nordic countries is inspired by the development in other countries, in general, and influenced by U.S. mediation efforts, scholars and practitioners, in particular.

2 Mediation Practice and Training in the Nordic Countries

Mediation exists in all of the Nordic countries. However, the level of activity varies. There is only minimal activity in Iceland and consequently no contribution from there in this volume. In Sweden, there is some activity but mediation has not quite caught on as a common conflict resolution practice. Both Norway and Finland seem

geographically situated between North America and Europe. The Finnish language is not Scandinavian. Indeed, unlike most European languages, it is not even Indo-European. However, the historical, societal, cultural and legal structures in Finland are similar to the other Nordic countries.

²10. juli 1795 Fr. om Forligelses-Commissioners Stiftelse overalt i Danmark, samt i Købstæderne i Norge.

to be moving towards a conflict resolution culture with mediation as a natural component. Denmark is somewhere in-between.

Mediation is offered by private providers as well as by public institutions but is most prevalent in public, highly institutionalised settings. For example, the judiciary in Denmark, Finland and Norway uses mediation as an alternative to adjudication in civil cases. Similarly, many family disputes are resolved in mediation or mediation-like settings. In Norway, for example, parties must go to mediation prior to filing a lawsuit (see Nylund 2018). Victim offender mediation is a widespread practice in all countries except Iceland. In Sweden, victim offender mediation is in place for young people under the age of 21 (Jacobsson et al. 2018) and, in Finland, regional mediation offices offer mediation all over the country. In the private sector, workplace mediation is on the rise and mediation is increasingly—albeit still only modestly—used to resolve commercial matters. In Denmark, for instance, attorney-mediators offer mediation services in commercial disputes along with two arbitration institutes.³ Mediation of consumer disputes is an area of emerging mediation practices. Consumers have traditionally had access to cheap and relatively informal and fast dispute resolution mechanisms in all Nordic countries and now mediation, too.

There is limited regulation of mediator practice in the Nordic countries. None of the countries has general regulation in their legislation or by national professional bodies. Mediators in some areas of practice have, however, instituted their own professional requirements. For example, a court-connected mediator in Denmark must be trained in mediation and follow a set of ethical guidelines.⁴ In many other settings, such as in Norwegian victim offender mediation, the only requirement is mediator training. However, in neither this setting nor elsewhere is there a set standard for training requirements nor any kind of certification procedures in place. Mediation training in the Nordic countries varies from short courses with a couple of days training to longer programmes all the way to a two-year part-time master's degree programme.

3 Nordic Mediation Research

With the emergence of mediation practices, research has emerged as well—in particular, in the last 10 years. Today mediation research constitutes an established field of inquiry with contributions from several academic disciplines (law, psychology, history, anthropology etc.) based on multiple methodological qualitative as well as quantitative approaches. The development of mediation research has not been coordinated cross-border and across academic approaches, and much is published in the researchers' national languages only. This volume is the result of three explorative

³See <http://mediatoradvokater.dk/>, <http://voldgiftsinstitutet.dk/> and <https://voldgift.dk/> (last assessed 23.10.17).

⁴See <https://www.domstol.dk/saadangoerdu/retsmaegling/Pages/Etiskeretningslinjerforretsmaegling.aspx>.

workshops conducted in 2016–2017 where 16 mediation researchers from a variety of fields and four different countries came together for the first time to explore and develop their research, as well as taking steps to making it available in English.

As a very tangible result of this work, this volume presents a collection of Nordic mediation research spanning over several types of mediation and different theoretical and methodological approaches. The contributions are random rather than representative, as sought to find interesting contributions in an organic process. Thus, the contents do not reflect all Nordic mediation research, neither is it representative of all forms of mediation available or the research on them.

Although the contributions are not representative of all mediation practice and research, they still reflect some generic trends described above. First, the articles reflect the proliferation of public-sector mediation in highly institutionalised settings and the strong connection between the justice system and mediation. Consequently, most of the contributions discuss court-connected civil or family mediation, victim offender mediation, and pre-action voluntary or mandatory family/child custody mediation.

Second, although mediation is present in all Nordic countries, it seems to be more common in Denmark, Finland and Norway, than in Sweden and Iceland. Not surprisingly, research and researchers are distributed unevenly as well and the contributions in this book reflect this. Third, across areas of practice and countries, some topics and perspectives are more frequent than others. We see that in the research presented in this volume, too.

The articles in this volume are arranged thematically rather than by country, area of practice or research methodology, as we think that themes provide the most interesting categorisation for readers. The articles in *Part I* focus on the systemic aspects of mediation. They are, in particular, concerned with how mediation is understood, developed and organised in different contexts and how the understanding and organisation of mediation is reflected in the use and practices of mediation. The articles in *Part II* critically examine the role of the mediator and mediation processes and try to answer questions such as: To what extent does mediated agreements reflect party self-determination and creative problem-solving? What role(s) are assigned to the mediator? What unspoken expectations do the parties in mediation face and how do these influence the mediation process and outcomes? In *Part III*, the articles focus on children as an active subject in mediation. They look at how children can participate in decision-making in mandatory mediation processes and examine whether mediation is in the best interests of the child seen from a legal perspective. The over-arching themes of these first three parts are the vagueness or over-inclusiveness of mediation and related concepts, how mediation interacts with and sometimes is co-opted by other dispute resolution mechanisms and social services, and how these processes influence the role of the mediator, the mediation process and the outcomes of mediation. The articles in *Part IV* discuss the relationship between mediation theory and mediation practices, as well as describe school mediation in Finland as an example of a particular area of practice.

The entire volume is available through open access on mediationresearch.org, together with other resources on mediation in the Nordic countries.

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